

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DERRICK BRANCH,

Petitioner,

v.

JERI BOE,

Respondent.

Case No. 2:24-cv-00517-BJR-TLF

ORDER GRANTING MOTION TO
AMEND, DENYING MOTION

Petitioner Derrick Branch proceeds unrepresented by counsel and *in forma pauperis* in this 28 U.S.C. § 2254 federal habeas corpus action. Dkts. 3, 4. Petitioner's original petition raises three claims for relief. *Id.* Respondent has filed an answer to the petition and relevant portions of the state court record. Dkt. 11. Petitioner now moves to amend his petition raising six claims for relief. Dkt. 25. Respondent does not object to petitioner's motion to amend his petition but requests an additional 45 days to file an answer to the amended petition. Dkt. 26. Petitioner also moves to have "the entire 26 volumes of Trial Transcript Mailed." Dkt. 24. Respondent has not filed a response to this motion.

Motion to Amend

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure,

(1) Amending as a Matter of Course

A party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) Other Amendments

In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

While petitioner cannot amend as a matter of course at this time, respondent has filed a response to the motion stating he does not oppose the motion. Dkt. 26. Further, the Court finds justice requires allowing petitioner to amend as this is a habeas corpus action. Therefore, petitioner's motion to amend the petition (Dkt. 25) is GRANTED. Petitioner's proposed amended petition (Dkt. 25-1) is hereby deemed filed as petitioner's amended petition.

Respondent has requested 45 days to respond to the amended petition. Dkt. 26. Therefore, the Court orders the following briefing schedule:

(1) Respondent's answer to the amended petition is due on or before **September 27, 2024**. Respondent is directed to note his answer for **October 25, 2024**.

(2) Petitioner's response to the answer is due on or before **October 18, 2024**.

(3) Respondent may file a reply to petitioner's response on or before **October 25, 2024**.

The Clerk is directed to docket petitioner's proposed amended petition (Dkt. 25-1) as petitioner's amended petition. As the amended petition supersedes the petition, the original petition and the answer to the original petition are denied as moot. The Clerk is directed to remove respondent's answer to the petition (Dkt. 10) from the Court's calendar.

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Motion to Have Trial Transcripts Mailed

Petitioner also moves to have “the entire 26 volumes of Trial Transcript Mailed.” Dkt. 24. Petitioner previously filed a motion to “resend state court record.” Dkt. 19. Respondent subsequently filed a certificate of service indicating that copies of the “Submission of Relevant State Court Record and Exhibits 1-56 that were previously filed on 6/10/24” were mailed to petitioner on June 27, 2024. Dkt. 21.

In his motion, petitioner indicates that he received “the relevant portions of the state record, but I did not receive the entire 26 volumes of trial transcripts.” Dkt. 24. The state court record filed with the Court includes 56 exhibits including exhibits 30-56 which consist of 26 volumes of the trial transcript (denominated “Verbatim Report of Proceedings”). The Court notes that it is unclear from petitioner’s motion what portions of the state court record petitioner in fact received and what portions he believes he is missing. Accordingly, the Court hereby orders:

(1) On or before **August 26, 2024**, petitioner should notify the Court which, if any, of the 56 exhibits he has not received.

(2) Respondent may file a response by **September 3, 2024**.

(3) The Clerk is directed to re-note petitioner’s motion (Dkt. 24) to **September 3, 2024**.

The Clerk is directed to send a copy of this order to petitioner and counsel for respondent.

Dated this 13th day of August, 2024.



Theresa L. Fricke
United States Magistrate Judge